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Congress' Spotlight on the Oval Office: The Senate Watergate Hearings

Samuel Dash*

It is the twentieth anniversary of the Senate Watergate hearings, and I think it is both remarkable and commendable that the Shepard Broad Law School at Nova University is holding this Watergate conference.

The exposure of Watergate was a very special event in our history. It was a turning point, when we began to look at our government differently. When we began, perhaps, to grow up and implement, as we have from time to time in our history, what the Framers wanted America to do, the people to do—and that is to hold their government accountable.

It's a great time to remember what happened twenty years ago, to rethink it, and to learn again some of the lessons that we gained from it. I know that there are students who, when they hear Watergate, at least know generally what that is about, but not very specifically. However, even those who watched the hearings, and have some sort of memory of what they were all about, have forgotten many of the details. I still hear references to things that came later in the press that sort of memorialized Watergate, but that really had nothing to do with Watergate.

When I now come to class to teach my students (I think they were about four or five-years-old at the time of the Watergate hearings), some of them come up and say, "My mother told me that you had something to do with Watergate." They don't know what I had to do with Watergate, and

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In addition to the Senate Watergate investigation, Professor Dash has performed a number of significant investigations and international missions: he conducted undercover investigations of the Chicago municipal courts; he investigated the actions of British paratroopers in Northern Ireland; he served as Chief Counsel to the State Senate impeachment proceedings against the Governor of Alaska; and he was appointed Special Counsel to the President of the Senate of Puerto Rico for a political murder investigation. Professor Dash also assisted with the exit of a Russian dissident from the former Soviet Union, and he was the first American allowed by the South African government to interview Nelson Mandela while in prison.

This essay comprises the edited remarks of Professor Dash delivered at the Watergate Era Symposium held at Nova University Shepard Broad Law Center in Fort Lauderdale, Florida on March 25-26, 1993.

so I have to remind them that I didn't go to prison. I was asking the questions, not answering them.

Watergate was much more than a break-in. But the break-in was the thread that began to unravel the whole ordeal. There was a burglary of the Democratic National Committee ("DNC") headquarters at the Watergate office complex. Nixon called it a "third rate burglary." It looked like the Keystone Cops; they didn't even know their way around, and they got caught.

The man who directed the burglars, G. Gordon Liddy, is now a radio celebrity and has a large audience in Washington, D.C. He regales his listeners with stories about his will and his strength, and he calls me the "hapless Sam Dash," who was so incompetent that he couldn't find his way to the Watergate Hotel itself. On the twentieth anniversary of the break-in this past June 17, 1992, Gordon Liddy took his microphone, went down to the Watergate, and interviewed the cops who arrested him. Only in America!

The burglars actually broke into the Watergate twice. When they went in the first time and placed their bugs, apparently, they weren't getting good reception. Liddy told White House counsel John Dean that Attorney General Mitchell had called him into the office and said, "It isn't worth [expletives deleted], I want you to go back in there again and put them in a better place." Liddy said to Dean, "It's my reputation at stake, we gotta go back in again."

So they went back in again. There is a very funny story, which is not well known, that shows Watergate also involved providence. We would never have known about the break-in, we would never have conducted the hearings, and we would never have known about Nixon's involvement, but for a very strange quirk of history.

When the burglars went in the second time, in order to keep going back and forth with their tools, Jim McCord (the wire-tap expert and former CIA agent) put tape around the door latch so that the door that otherwise locked automatically would not lock. The Watergate security guard, who became very famous in the newspapers, was coming down on his route and he saw the tape. That didn't really alert him because he said there were carpenters in the building earlier who were doing some construction work, and he thought they must have put the tape on. So the guard took the tape off. McCord came back and saw the tape was off, and he rushed back to Liddy. "We've been found out! We gotta get out of here!" he said. Liddy replied, "No. Mitchell told me I had to do the job right, we're staying. Put more tape on." Well, McCord put more tape on and when the guard came back the next time around he saw the tape on the door lock again. The guard

knew that couldn't be from the carpenters—it had to be a very current event—so he called the police.

This is when providence intervened. The call went out to a uniform police patrol in a marked car, and they were supposed to come and search for the burglars. They ran out of gas, however, and they radioed, "Is there any other car in the area?" A nearby drug investigation team dressed in dirty jackets and caps and sitting in an unmarked car (undercover, of course) answered, "We're just around the corner." And they responded.

Across the street from the Watergate, in the Howard Johnsons Hotel, was a lookout for the burglars. He was a man named Baldwin who, while the burglars were inside, was supposed to see if any cops were coming. He had a walkie-talkie so he could call ahead and say, "Get out! The cops are coming!" But, all he saw was this beat-up car, and guys getting out wearing these dirty jackets and caps. He didn't think they could possibly be the cops. He didn't get alarmed until he saw the lights go on as the undercover detectives began to search the building from the ground floor up.

When Baldwin saw the undercover officers reach the 7th floor where DNC headquarters was located, he became concerned that there may be something wrong. Baldwin watched the detectives come out on the balcony, close to the burglars who were just inside the offices. So he radioed Liddy and said, "Are our people in plain clothes, or are they in formal street wear?" Liddy said, "formal street wear." Baldwin could only respond, "Ah-Oh!"

Right at that point the burglars were apprehended by the police, who had their guns drawn. It was too late. But for the marked police-car running out of gas, and the plain clothes team coming on, we would have never learned of Watergate. The burglars would have been alerted if a marked car had shown up, and they would've gotten out. This is just one of a number of fascinating examples of providence, luck, fate—whatever you want to call it—which include, perhaps, our finding of the Oval Office tapes.

But, as I said, Watergate was more than the break-in. It was about the pervasive abuse of power, and not just the burglary of the Watergate. The White House that Richard Nixon ran had a fear of dissent and a fear of demonstration. His coterie of aides believed that the only person who was good for America and could save America from subversives was Richard Nixon.

These were men who wore little American flags on their lapels. These were men blinded by a terribly distorted sense of patriotism. Mitchell testified that, "I would've done anything to keep Nixon in power and to keep McGovern out, who would've destroyed our country." I remember

one of the Senators asking Mitchell, "You say 'anything'? Would you commit murder?" And Mitchell smoked his pipe and said, "That's a hard question, Senator."

Gordon Liddy recently told Larry King on a radio program that he had been commissioned by the White House to rub-out investigative journalist Jack Anderson. Anderson had somehow received a leak from a national security staffer and had published it in his column. Liddy said, "He deserved to die, and I was the hit-man." King, who was somewhat taken aback, said, "Well, you didn't do it. He's alive now." "Yes, yes," Liddy said, "The White House chickened out. I think that he should have been killed, and I would've killed him. But they chickened out."

There's another funny little story about Liddy. When the burglars were caught, he had not been in the DNC offices with them. He and Hunt were in a suite of rooms in the Watergate Hotel. Liddy immediately ran the next day to Dean to tell him everything had gone wrong. He said to Dean, "I screwed up. I was not supposed to get involved because I could be identified with the Committee to Re-elect the President. Therefore, I deserve to be executed. I'm a Catholic. I can't commit suicide. So I will stand on any street corner in Washington you want, and you can come around in a black car and shoot me with a machine gun." Dean told me, "That's got to be crazy. He thinks I'm gonna come around and shoot him with a machine gun."

These were the people who were involved; the Keystone Cops. Nevertheless, although the stories are amusing now, they reflect a shocking willingness by those misguided men to abuse the powers of the presidency. In order to ferret out dissenters, the Nixon Administration authorized burglaries all over the country—the "black bag" jobs.

Liddy and Hunt were sent out to break into the office of Daniel Ellsberg's psychiatrist. Ellsberg had leaked the Pentagon Papers. They broke into the publisher of the *Las Vegas Sun*'s office to get what they thought were incriminating documents against Nixon. They wire-tapped, they bugged, and they blacklisted dozens of people who had done nothing more than criticize the president.

These men also planned to set up a boat outside Miami on the water, just when the Democrats were holding their national convention in the city. The boat was to be equipped with concealed cameras, microphones, and hired prostitutes. Then, they would lure democratic candidates and big-wigs onto the boat to photograph them in all kinds of compromising scenes. And that wasn't the end of it. They actually had a plan to kidnap dissenters all over the country, put them on a plane, and drop them in the jungles of Central America.

Gordon Liddy had devised a master plan incorporating all these schemes. The principal operation (code-named "Gemstone") was to burglarize the DNC office files at the Watergate. Liddy had a proposed budget, detailing how much each operation would cost. Mitchell's only response was, "The budget's too big." He did not say, "You can't do that. That's criminal." No, his concern was the expense, "Cut it down, cut it down." Finally, they narrowed down their options, and they only had enough money to break into the Watergate.

It is an almost inconceivable image: Mitchell, the Attorney General of the United States—the chief law enforcement officer in the nation—sat in his office at the Department of Justice and listened to Liddy present a briefing with an easel and charts outlining these unlawful plans to harass, embarrass, and undermine the Democrats. Mitchell would later refer to these actions as "the White House Horrors."

There was a secret police agency inside the White House. The President's men didn't trust the FBI or the CIA, and they used their own small police agency called the "Plumbers" in the basement of the White House. They were called the Plumbers because Nixon was driven to obsession over the leaks coming out of the White House, and these guys were going to plug the leaks. But they were also doing much more. They were burglarizing, wire-tapping, and doing everything else.

The cover-up was not to cover up the break-in itself. Rather, the White House palace guard was worried that if the Watergate burglars actually were convicted and went to jail, they would disclose their involvement in all these other "black bag" jobs. They would reveal the White House Horrors—this persistent, pervasive criminal activity that Nixon and the Plumbers were involved in.

The exposure of these outrageous actions through the Senate Watergate hearings had a tremendous impact on the public. It really changed how we perceived our government. The ripples of Watergate, even twenty years after it happened, are still felt today. As we are looking back after twenty years, we should ask the question: "Why? Why did it provoke such an enormous response?" There have been other congressional exposures of government wrong-doing in the past without this impact. However, because of the Senate Watergate hearings, we had a unique, classic demonstration of what the Framers expected in the operation of the separation of powers.

Congressional investigations are not new in America. During the time of Watergate, some people said, "Well here it is. A Democratic Senate is exploiting political power to embarrass a Republican president," as though congressional investigations were invented by the Watergate hearings. Some

complained that it was an exploitation of power—raw partisan politics rather than the proper utilization of a constitutional prerogative.

Even though the power of Congress to investigate, to call witnesses, and to hold hearings is not explicit in the Constitution, the Supreme Court has held, over and over again, that the investigative power of Congress is an inherent part of both its legislative function and its public-informing function. *Watkins v. United States*¹ is one of the leading cases which established this concept. That case came up during the House Un-American Activities Committee hearings and shortly before the McCarthy hearings. Those hearings represent the great potential for abuse of the congressional power to investigate. Under the pretext of Executive branch oversight, the committees tried to impose a philosophy of life on all Americans. They wanted to find out who the communists were in Hollywood, in government, in newspapers, and in business. It was a terrible exploitation of congressional power and a tragic misuse of the constitutional powers of Congress.

In *Watkins*, the Supreme Court found the purpose of that congressional investigation was exposure for exposure's sake. The Court said that, although the power of Congress to investigate is broad, it does not include the power to call citizens before its committees simply to expose them. Congress has to base whatever it does in the legislative power or the public-informing function.²

The Court's opinion quoted Woodrow Wilson when he was an academic at the turn of the century. This quotation is constantly invoked to identify the powers of Congress in holding such investigations:

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the

1. 354 U.S. 178 (1957).

2. See *id.* at 199-201.

only really self governing people is that people which discusses and interrogates its administration.³

That was a foundation which the Court has restated many times. The Congress has the important responsibility to inquire into how the government works and to talk about it to the people.

Wilson's essay was written before radio and before television. The kinds of hearings that Wilson was discussing were hearings that only a few people could attend and maybe the newspapers would report. We've gone much further than that. Picking up on what Wilson wrote and what the Court said in *Watkins*, with television today we can become once again a town meeting. During the Watergate hearings, millions and millions of people all over this land, and in every town and city, were glued to the screen as though they were sitting in the Senate Caucus room watching the hearing. They actually had a better seat because there were close-ups, and we were so crowded in the Caucus room that the people in the rear couldn't necessarily see the witnesses.

Through television, we have enabled the philosophy Wilson set forth to work on a grand scale. We should take full advantage of this tool so that the people can be instructed. It will only work, though, if the committee that is conducting the investigation knows what its function is, knows how to accomplish that function, and knows how to communicate to the public.

Congress has been investigating the Executive ever since George Washington was President of the United States. In 1792, Major General St. Clair, Commander in Chief of the U.S. Army, was sent by Washington to quiet the Indians in the Ohio area. Five tribes out-maneuvered the U.S. Army and decimated the troops. St. Clair came back in tatters to Washington. A House Select Committee wanted to find out how the Indians could so destroy the American Army (this was the Army that beat the British in the Revolution). How could the Indians do this to our army?

General St. Clair claimed that he had been given wet powder, leaky tents, and—believe it or not—no bells for his horses. In one of the more interesting notes about this episode, it seems that the army needed bells on its horses at night because they would stray, and the soldiers couldn't find them quickly without following the sound of the bells. So the army was in a vulnerable position when the horses could not be corralled.

The House in 1792 subpoenaed the War Department, the first subpoena of the Executive by the Congress. The War Department secretary ran to

3. JAMES HAMILTON, *THE POWER TO PROBE* 127-28 (1938) (quoting WOODROW WILSON, *CONGRESSIONAL GOVERNMENT* 303 (Houghton, Mifflin & Co. (1900)).

President Washington and said, “Do we have to honor a subpoena of the Congress?” Washington called in Jefferson and Hamilton, and they said there surely must be occasions when they don’t have to reveal executive information to the Congress. But they said something then that presidents have said over and over again, up until this time: “We don’t want to look like we’re holding things back from the public [a cover-up], so this time let us give it to them.”

They didn’t have duplicating machines at that time, and the House clerk had to come up with quill pen and ink to copy the records of the War Department. Unfortunately, the inquest was not very successful. There was an investigation, witnesses were called, and the newspapers played up the controversy. But St. Clair never was vindicated because politics entered in and the Executive branch didn’t want to have the War Department embarrassed too much. So, even though the evidence was pretty clear that they had been very negligent in equipping the troops, the investigation concluded without much result.

In 1808, General Wilkenson, another Commander in Chief of the Army, entered into a treasonous pact with the King of Spain. The general and the king planned to organize a separate army, cut off the western lands of the United States, and claim the Louisiana Territory for Spain. Aaron Burr was somewhere involved in this conspiracy. The House began an investigation, but General Wilkenson burned all the evidence. So, well before Watergate, there was destruction of evidence to block a congressional investigation. The House couldn’t prove anything, and Wilkenson died a very rich man in Mexico, still wearing his uniform to impress the Mexicans.

In 1818, Old Hickory, Andrew Jackson, invaded Spanish Florida. The issue then was—to borrow a question made famous during Watergate—what did the President (Monroe) know and when did he know it? The congressional committee sought to learn whether President Monroe had authorized Jackson’s invasion. They weren’t able to prove it; they weren’t able to show anything.

Of more recent fame, there was the Teapot Dome scandal in 1924, and, at the close of World War II, Congress conducted an investigation to determine how the Japanese were able to surprise us at Pearl Harbor. In the 1950s, as noted earlier, there was the shameful spectacle of the McCarthy hearings and the House Un-American Activities investigations. As this list demonstrates, there has been a long, colorful history of congressional investigations prior to Watergate.

The Senate Watergate Committee hearings were not the first to target a president. The first time a president was targeted was in 1814, and the

target was James Madison. The British had burned Washington, D.C. during the War of 1812, and Congress wanted President Madison to be held to account for his negligence in failing to provide an effective military defense of the city.

In 1860, President Buchanan was exposed for corrupt activities. Although Congress was considering impeachment, most congressmen did not think they could get the necessary votes. This was one case, however, in which a congressional investigation had the same effect as Watergate. Buchanan was defeated by Honest Abe Lincoln, who rode the wave of public sentiment against Buchanan generated by the congressional investigation. One can see again the separation of powers working.

In 1910, there was an investigation of President Taft, again for corruption. In 1912, Theodore Roosevelt was attacked and defeated for a third term partly on the ground of illegal campaign financing from corporations. Time and time again, presidential conduct was the subject of congressional investigations.

Finally, in this brief historical review, the Senate Watergate Committee was not the first to investigate criminal charges. Throughout Watergate there was a complaint: If Congress investigates, Congress should investigate broad areas for legislative remedial purposes. These critics said Congress did not have the right to sit in judgment as if it were a criminal case. They protested that Congress could not bring before it a person already charged by a grand jury and waiting for trial, and require that person to give testimony, or others to give testimony, on those same charges. Obviously, this would embarrass and prejudice criminal trials.

But, in 1962, the Supreme Court decided *Hutcheson v. United States*,⁴ and held that Congress had the power to do exactly that. A labor union president had been indicted and was then called before the McClellan Committee in Congress, which was looking into labor racketeering activities. This man was asked the same questions he was going to have to respond to (or take the 5th Amendment) at his trial.⁵ He said, "You can't do this to me."⁶

His contempt citation was upheld by the Supreme Court on the ground that Congress has a separate public-informing function and legislative function, and Congress can look into the same activity which was the basis for the criminal prosecution.⁷ Obviously, Congress cannot prosecute,

4. 369 U.S. 599 (1962).

5. *Id.* at 602.

6. He refused to answer the questions on due process grounds. *Id.* at 611.

7. *Id.* at 622.

Congress cannot convict, and Congress cannot punish. It can, however, conduct an inquiry into matters within its legislative jurisdiction.

The Senate Watergate Committee was really, in 1973, the culmination of this history. In a sense, it was not extraordinary. It was not extraordinary for the Senate to appoint the Senate Select Committee for Presidential Campaign Activities.⁸

Although in light of history, it was not unusual to appoint such a committee, what was unusual was that the vote of the Senate was unanimous. The Republicans in the Senate were worried that it was a Republican Administration being investigated by a Democratic majority of the Senate. Therefore, the Administration ought to have had at least somebody overlooking what the Committee was doing to insure that it was fair and to protect the Administration as best as possible. The Republicans wanted to designate a minority counsel, and named Fred Thompson to the position.

Senator Ervin, who was the Chairman of the Senate Watergate Committee, and I readily agreed to this proposal. We certainly welcomed the particular person involved, Fred Thompson, who was a remarkable lawyer (although he is better recognized today for his talent as an actor in a number of major Hollywood films). Fred is a man of integrity, and I enjoyed working with him, although, as he said, we kept things from each other when we knew he was following a different agenda than mine.

In light of this long history of congressional investigations involving presidents, I wondered why none of them had the impact of Watergate. The Watergate hearings captured the people's attention and brought them back into the role that the people are supposed to play in a democracy: The people are the sovereign, calling on their Executive to be accountable to them.

None of those other investigations had that impact. Why? Why Watergate? Not Watergate itself, but the Watergate Committee. I give primary credit to the chairman of that Committee. You can look at chairmen of investigating committees all through our history and not one of them was anything like Senator Sam Ervin.

By the time he was appointed, Sam Ervin was an elder statesman. He had been a Justice of the Supreme Court of North Carolina. He was a devoted constitutional scholar. He kept a little copy of the Constitution in his back pocket, and he could quote it word for word just as he could quote poetry and the King James Version of the Bible word for word. Many

8. That name was too long for the newspaper reporters, and so they referred to it as the Senate Watergate Committee. That's what it is called all the time now.

people saw him do this at the hearings and thought that this was a kind of contrived display or political show on his part. But this was no affectation. It was authentic Sam Ervin in his office or on the telephone. He was a person who just was able to punctuate everything he said with quotations from the Bible, quotations from the Constitution, or various little poems that were dear to him. He was a man of great integrity who believed in the fundamental, sacred purpose of our Constitution. I think Sam Ervin would have been at home with the Founders. To him, this investigation was a mission. He strongly believed in our separation of powers and the role of the Congress in checking and balancing the Executive.

Of course, he once said, "President Nixon, I believe, also believes in the separation of powers. From what I see, he wants to separate the Congress from all its powers." Those were some of the little things that Ervin would say from time to time.

I don't want to put halos over every member of the Committee. The only halo I want to hand out is to Ervin. There were three other Democrats on the Committee and three Republicans. The three other Democrats were so-so, and they were not as committed to the exposure of the facts and the separation of powers as Sam Ervin. If it weren't for the strength of Sam Ervin as a leader and a towering figure in the Senate, we wouldn't have been able to accomplish what we did. The other senators were constantly trying to pull the rug a little; constantly saying, "Haven't we stuck our neck out too far?"

One thing you learn about senators and congressmen when you are working on the Hill: they're all cowards, with some exceptions to that rule. They're scared, and they run scared. One has to only read a ripple of a rumor, and they're all running around to find a shadow to hide in. They were so afraid of projecting themselves out too far and getting a backlash. They were continually saying, almost after the first day or two, "Haven't we done well enough? Can't we cool it off? Let's close it down."

When Fred Thompson and I first met in March of 1973, we went to lunch together at the Monocle Restaurant on Capitol Hill. I asked, "Is your family coming up? Where are you living?"

Fred said, "I'm staying at a hotel."

I said, "All the time we're going to be working?"

He said, "What do you mean all the time? Senator Baker told me I'm going home in June."

I said, "Going home in June?"

"Well," he said, "We're gonna have a couple of weeks of investigation and hearings and close it down."

I said, "You must be wrong. We're going to be here maybe a year or two." And Fred was shocked.

The original plan of the minority was to go through the motions and do nothing. That, perhaps, was also the thought of some in the majority. But Sam Ervin stood straight. Instead of doing what was usual in picking a Chief Counsel, Sam Ervin went outside the Congress to look for somebody he could trust, who would be able to do this investigation on the merits. He told me that he turned down anybody who applied for it. He said he had hundreds of people, judges and lawyers, some wanting to do it for nothing. He said, "You know what you get for nothing. Nothing. I don't know what their motives are, I need a lawyer who will know what the job is all about and have the courage to go forward in it and the ability to do it."

After using me for a while as a consultant, Senator Ervin telephoned me out of the blue. He said that he had checked me out, I had the qualifications, and he'd had the committee approve it, and then asked if I would be willing to serve as Chief Counsel.

At that time, I was beginning my spring semester at Georgetown. I had to tell him I could not do it, I had my classes. He got very upset and said, "I'll talk to the president of the university." I said, "No, I'll talk to the dean."

When I talked with the dean, he asked me, "You said yes of course?"

I said, "How could I do it? I have to teach my classes."

He said, "Hell, we can get any professor to teach your classes! Call him back before he changes his mind."

I had been district attorney, and I had been involved in controversial investigations. I knew that this was a major challenge I would be undertaking. And I had conditions. First condition: I hire my own staff. No one on the Committee should dictate who would work for me, and my staff should not be people out of the Senate staff. Not that they weren't capable people, but I didn't want anyone loyal to any of the political people on the Hill. The second condition: I had to have sufficient resources, budget. And the third condition: I had to be permitted to take the investigation as far as it would lead me, without any restriction or limitation by the Committee.

Ervin said to me, "If you hadn't asked for those conditions, you wouldn't be good for me. Do you want it in writing?" I was embarrassed, but I said, "Well, yes." He gave me a letter with all of those conditions and said, "If I ever go back on any of them, come to my office and throw it in my face."

That never happened. I was able to pick some of the finest young lawyers (mostly former prosecutors) and investigators. I had a staff of one hundred. These were people who had come from some of the best prosecutors' offices in the nation, such as Robert Morgenthau's in the Southern District of New York. He was one of the great United States Attorneys. They had worked on white collar crime and complex organized crime cases. They were used to dealing with complicated legal issues which involved hundreds or thousands of documents. Because so many of them wanted to work on this investigation, I was able to get the best.

There were no restrictions from Senator Ervin or the committee. Our charter was simple and direct: we had to make a thorough and complete investigation.

Congress has many powers to conduct an investigation. Don't ever believe a congressional committee that tells you that it's too difficult to investigate something or find out what happened—don't believe it. A congressional investigating committee has as much power as a prosecutor. The committee has subpoena power and the power to hold people in contempt, which the Justice Department enforces in a criminal prosecution.

If it decides not to refer a case to the Justice Department, a congressional committee even has the power to call uncooperative witnesses (who refuse to respond to a subpoena or answer a question) before the Senate, hold them in contempt, and imprison them in a dungeon in the basement of the Senate. That is the separation of powers. That jail is still there, but I don't remember when it was last used. Congress today prefers to send the matter over to the Justice Department to prosecute under an indictment for contempt. But the congressional committees still have that power. They have the power to grant immunity as well. These committees exercise awesome powers of Congress when they subpoena and bring before them witnesses and demand an explanation for various actions.

You have to be in the position of a witness called before the Congress to know the awe and (sometimes) solemnity of that process. It usually will produce information. Good investigators, utilizing all of the strategies, techniques, and tools of investigation will be able to ascertain the facts. It is a cop-out when a congressional committee says it can't get the facts.

Before we could begin to make a thorough and complete investigation, we first had to define our role and function. Many of us had not worked on the Hill or in congressional investigations. It was a different role, a different function, and a different style than a trial lawyer has in a courtroom. You do not collect and present your evidence in the traditional way an attorney would prosecute a case.

I realized uppermost, that if we were going to serve the public-informing function Wilson had praised, we had to be able to reach the minds of the American people in such a way as to win their confidence. Therefore, underlying everything we did, there had to be fairness and objectivity. If we were seen as persecutors, if we were seen as unfair, no matter the facts that we presented, the reaction of the American people would be to reject us. The only way I knew to get the support of the American people was to convince them that we were doing an honest job and that we did not have an agenda to “get Richard Nixon.”

There was a hope on my part and on Senator Ervin’s part that the President of the United States was not involved. Whether you approved or disapproved of Richard Nixon, he was still our President. Nobody really wanted the President of the United States to be involved in crime, and we were hoping the evidence wouldn’t go that far. He was not our target.

We began with a very systematic method I called the “vacuum cleaner approach.” We swept up everything, every piece of information related to Watergate. Then we began to sift and analyze them.

We were the first Senate Investigating Committee to utilize the technology of computers. Committees before us were frightened of computer technology, even in 1973. The staff at the Library of Congress, which worked with computers to sort all of their documents and books, offered us their services. I readily accepted the offer. We developed a computer system so that every piece of information that came into our investigation—whether it was a newspaper clipping, a summary of an interview, or other investigative material—first had to be entered into a computer databank. The system was of remarkable value. When we began to put things together to prepare for hearings or prepare for a witness interview, we could request a chronological printout on John Mitchell, for example. The computer would then produce everything our files contained: every significant date, event, and witness associated with Mitchell. Imagine the great difficulty we would have encountered if we had to search the files by hand for this information. We were dealing with thousands and thousands of documents. There was some comfort in knowing that you could pull all this research back—and actually be surprised, because sometimes I reviewed important information that I had forgotten. I would say, “Do we know this? The computer must be wrong.”

We also copied every one of our documents and newspaper clippings onto microfilm. So, if the abstract from the computer printout told us that there was a news story on that matter, there was a corresponding document on microfilm. We went to the microfilm machine, punched in the number, and printed the document or newspaper article. We could get it in minutes.

I remember one instance when Attorney General Mitchell was before the Committee, and he was being asked about a very important event. Mitchell was the original stonewaller, who would smoke his pipe and say, "I just can't recall, I don't remember."

I asked him, "Wasn't that clearly on the front page, that event in which you participated, of the Washington Post?"

"Well," he said, "I don't remember."

A phone call was made to our computer staff and within minutes a clerk came up with a printout of the clipping. Just imagine trying to find by hand that one item in hundreds of files in time to cross-examine the witness. The clipping was handed to me, and I handed it to another staff member who showed it to Mitchell. He then conceded, "Oh yes, I remember that." We looked great, we were so prepared. It was the computer and the retrieval system that allowed us to do such remarkable things with the Watergate investigation. In addition, after the appointment of the special prosecutor, we gave his office all of the evidence we had assembled on our computer databank. We also presented the House Judiciary Impeachment Committee with all these thousands of documents on computer tapes.

The challenge to the Senate Watergate Committee was not the investigation because, as noted earlier, with all the powers that a congressional committee has, it can make a good investigation. The challenge was the hearings. How do you present all the facts that you collect in a way that you can communicate it to the viewing public so that they understand in the same way you understand it?

We all know the problems of communication. You can know things and try to communicate them to another, but what the other person hears and receives may not be the message you intended to convey. As there is an art form in telling a story, there is a special art form in telling a story on television. They do it all the time in the detective stories and entertaining shows that we watch everyday. It was important for us to be able to produce that kind of a "show"—but for educational purposes rather than entertainment.

I was immediately challenged by the networks who were going to cover the Watergate hearings on television. It was going to be very expensive for them, and they wanted to make sure they had an audience. In the beginning they didn't think we'd have an audience because congressional hearings were considered boring, even though the facts of the Watergate investigation were far more compelling than the routine congressional hearing. Some of their top executives met with me, and they said, "Of course we gotta talk about who your first witnesses are. You're gonna put on Haldeman and

Ehrlichman, the principal conspirators.” They said, “You gotta put on a sexy witness so the public will watch.”

“Well,” I said, “I wasn’t planning to do that. They’re the accused, and I don’t plan to put the accused on before I put on the accusers. First, it is usually done that way. Second, I want to teach the American people a civics lesson on how this all started.”

I wanted to begin with the re-election campaign. It all started from what was called CREEP, the Committee to Re-elect the President. Many of the campaign staff that were involved, like Liddy and Hunt, had been in the White House. Magruder, who directed the re-election committee, had been a White House aide working for Haldeman. I wanted to show how they had been shifted out of the White House and how they developed this Committee to Re-elect the President. This cast of characters was going to reappear as burglars and conspirators. That’s the only way I had to show it.

They said, “What does this mean?”

I said, “My first witness is going to be a man named Odle?”

“Who is Odle?”

I said, “He’s a little staff guy at the Committee to Re-elect the President, and he’s going to have an easel. On television, he’s going to show the chart of the White House staff and show how these people ended up on the Committee to Re-elect. He will explain what their roles were.”

“Ugh-gh-gh, boring!! We’re gonna lose the public,” the television executives began to complain to Ervin. “This is going to cost us, and this guy Dash is going to put on a boring set of hearings!”

Through a good part of the hearings we presented, the media in the well of the Caucus room would yawn in an exaggerated gesture to express that they were bored. The American people, however, were riveted to their television sets, listening to the story evolve as each witness testified. That’s what I wanted to achieve. I wanted to begin by educating the American people as to the political process: examining the re-election committee, demonstrating the movement of the staff from the White House to this committee, then showing the burglary plan.

Figuratively speaking, we had to bring the public into Mitchell’s office to hear the illegal plans Liddy briefed to the then Attorney General. So we had McCord, who had worked closely with Liddy, testify to all those activities. In front of the cameras, he explained how to tap a phone and how to place a bug. Then we focused on the burglary and the arrest at the Watergate DNC office. We brought the cops in to reconstruct how they caught the burglars. Then we moved on to the cover-up.

John Dean was our principal witness. But he was only one little person—although a very ambitious little person—who had accused the

President of the United States. If it were his word against Nixon's, I don't think the American people would have come down against the President on the basis of that testimony alone. Therefore, our concern all along was to find corroborating evidence to support what John Dean said.⁹

How could you corroborate such a secret set of meetings in the Oval Office? Who else was there but the President and his top aides? The President wasn't going to tell us what happened. Haldeman wouldn't tell us what happened. Ehrlichman wouldn't tell us what happened. Fortunately, during a private session in his home, Dean recalled that in a meeting in the Oval Office, as he was talking to the President about "hush money" for the burglars, Nixon suddenly stood up and went over to a bookcase and whispered in the bookcase, "I guess I was wrong in telling Colson that he could go ahead and pay Hunt."

Dean said to me, "I wondered why he [Nixon] whispered into the bookcase." Could he have been recording this meeting and not wanting to get that part onto the tape?

I said, "Oh my god, if he was, we would have corroboration. You would have an ear witness at least, the tape."

Dean wasn't sure. He said "I don't know, I don't. It's just a guess on my part. But, I don't know."

Without telling Dean, we then developed a strategy for my staff to find out if there could be any kind of recording in the Oval Office. We used a very interesting system we called "satellite charts." We knew that, when people worked among others in the White House, there were always eyes and ears watching. Especially if you are the President, or even if you're Haldeman or Ehrlichman, there are a lot of little eyes and ears watching you, they are so delighted to be in your presence. You don't notice them if you're the President, but they notice everything because it is something they want to remember for the rest of their lives—and they keep records.

So, we took each of the targets (Nixon, Haldeman, Ehrlichman) in the White House, and then we charted who were the people around them everyday: who transcribed and typed interviews, who purchased equipment for the Executive Office, who made the coffee, or anything. We actually developed over a hundred satellites. We called them all in and had a team of lawyers ask general questions not obviously aimed at the taping. But embedded into the questions were points concerning purchase of tapes, transcription of tapes, and maintenance of recording machines.

9. After weeks of cross-examining him, and preparing him for his testimony, I believed that John Dean was credible.

Only three people in the White House knew about the taping system: Haldeman; his staff assistant, Higby; and Butterfield, who was in charge of the Secret Service detail in the White House and had his office and desk just outside of Haldeman's office. Dean didn't know about it. Rose Mary Woods, Nixon's secretary, didn't know about it. Ehrlichman didn't know about it—and he got angry as hell when he found out that he had been bugged. Mitchell didn't know about it. Kleindienst didn't know about it. This was a tightly held secret. We didn't think Butterfield knew anything, but the dragnet approach we designed proved invaluable.

With a congressional investigation, there is no threshold standard of probable cause or reasonable suspicion to bring in anybody. It's called a grand inquest. It is like the grand jury in a sense. You can call anybody and ask any question if it is relevant to the inquiry delineated in the resolution. Butterfield was just one of a number of witnesses we had called in. Fred Thompson's staff gets the credit for this revelation because it was one of his young investigators who actually put the question to the White House aide. Butterfield already knew that Haldeman had been called before the Committee, but he didn't know what Haldeman told us. He also knew that Higby had been called; but again, he didn't know what had been disclosed. Butterfield was under oath, and he wasn't going to take a chance of committing perjury. So when the question was asked about a particular recording (we knew nothing about a system), he said, "Well, you probably already know this, but it's not one recording. I put in a system that has been recording every conversation in the Oval Office for the last two years."

It was a very sophisticated, automatic system. Wherever the President was, the Secret Service always followed him through a lighting system on a chart. The light would go on when he entered the Oval Office, the Cabinet Room, etc. In each one of these rooms, particularly the Oval Office, they put in a recording system. It was triggered by the lighting system when the President walked into the room. It only started to record when somebody spoke, because it was voice activated. That explained why the President incriminated himself—when you have an automatic taping system, you forget. In the Cabinet Room, the President had to move the switch himself, so he knew when he was recording. But in the Oval Office, it was automatic, and he frequently forgot about it. He said things I don't think he would have wanted to go on tape. There are other times, however, that you know he's speaking for the record.

That was the strategy that got us the taping system. We got to Butterfield. On that remarkable, historic Monday, July 16, 1973, we replaced the witness who was originally scheduled to testify with Butterfield. No one knew who Butterfield was. He was then Director of the Federal

Aviation Administration. He had refused, by the way, to be a witness because he said he was on his way to Russia to sign a treaty. Senator Ervin said it was more important that he talk about the taping system than sign a treaty in Russia. Ervin actually threatened that he would be jailed if he didn't come. He came.

As a courtesy, I turned over the microphone to Fred Thompson. Since his staff member had first asked the question which brought this stunning information to light, Fred had the right to open the questioning of Butterfield. He called on Butterfield to talk about the recording of conversations in the White House. When Butterfield mentioned that there was an automatic taping system in the Oval Office of the President of the United States during all these events John Dean had recounted, the scene blew up! Just like in the movies, reporters scrambled for their phones. Imagine the heads of state all over the world who learned that their meetings with the President were recorded. That's when everyone said he should have burned the tapes. I will leave that issue for another time.

My objective has been to highlight the strategy and techniques of an independent staff backed completely by a strong chairman. When I was investigating John Dean, his counsel told me that Dean could not come to the Senate Office Building because he suspected Senator Baker, who had been having private meetings with Nixon at the time he served on our Committee, was taking instructions from Nixon on how to destroy our investigation. If he came to the Senate Office Building to talk to me, Dean feared it would be leaked to Baker. Baker would then report it to the President, and he would be murdered. Dean was quite scared. So I agreed that I would come to his home (usually around midnight or 2:00 a.m.), and we would talk. The only person I would report these meetings to was Senator Ervin. The Senator agreed not to tell the other members of the Committee.

The purpose of those meetings on my part was to know whether Dean had enough information to justify granting immunity. After listening to him and seeing the documents he had secretly removed from the White House, I concluded that he did. I went back to Ervin and I said, "We have to grant immunity." Such a grant required a two-thirds vote of the Committee. By that time, Senator Weicker had joined us (the only Republican to do so), and he was voting however the Chairman would vote. That gave us five members voting with the Chairman, and that was the necessary two-thirds.

I said, "You've got to present Dean for immunity, but you cannot tell them what Dean is saying."

Imagine—those of you who know the word “chutzpah”—telling a United States Senator that he has to vote for immunity, but the Chairman and Chief Counsel won’t tell him what the witness is going to say.

Of course, Senator Baker and Senator Gurney blew up and said, “We’re the elected Senators. Who the hell is telling us that we’ve got to rubber stamp an immunity vote?”

Ervin said, “I’ve listened, I know what it is, I can’t tell you.” Then Ervin, who always had a humorous and pithy remark, said, “My daddy used to say that when you hire a lawyer, you ought to listen to him or fire him. Since we’re not about to fire Sam Dash, let’s listen to him.”

Everybody laughed out loud, and it sort of broke the ice. We got the two-thirds vote without the Committee knowing what Dean would say. Since there was no executive session for all the Senators and their staffs to hear Dean’s statements, we did not have to confront the serious risk of a calculated leak by the Republicans. We did not have to face the possible consequences of the White House attempting to undercut Dean and destroy him before his testimony was presented in open hearings.

With the backing of Senator Ervin, my staff had complete independence and virtually unlimited investigative authority. We were able to get to the truth and conduct the hearings in a way that we could tell the public the truth. By the end of the summer of 1973, the break in and cover-up had been exposed. We presented those hearings and dramatized them in a way that the public understood what we were saying. And they were outraged. That’s what brought the unprecedented response of the American people to Washington. Letters—millions and millions of letters—were written from every little town and city in the country. Families signed off: the mother, the father, the kids. Their messages were filled with blessings, support, outrage. These were genuine and spontaneous, not the result of orchestrated lobbying. Never before in the history of America did the American people talk back to its government the way they did after the Watergate hearings.

Nixon had called the American people “the Silent Majority.” He thought they didn’t care; he thought they were apathetic. Well, he was wrong. If you inform the American people, and they understand what’s going on, and you can reach their sense of outrage, they talk back. And I think that spirit has endured. I think Watergate had a tremendous impact on the American people. They found their voice again, and they demanded accountable government.

The Chief Counsel of the House Judiciary Committee came to see me and said that the Committee was getting a flood of letters from constituents. Nixon had said, “I don’t worry about impeachment. The House doesn’t have the guts to impeach me.” That’s true, they didn’t. They were

frightened. Yet, when their constituents wrote and when the hearings took place, they suddenly realized they had to hold impeachment hearings. They couldn't avoid it.

But for the Watergate hearings in the summer of 1973, there would have been no impeachment. But for the Watergate hearings, there would have been no aroused public sounding off. But for the hearings, there would not have been such an overwhelming response to the "Saturday night massacre," Nixon's firing of special prosecutor Cox. That, ordinarily, would have just been the President firing a prosecutor. What was the big deal? Having watched the Senate hearings, the people understood in October 1973 what was going on. They realized the meaning of it, and they hit back so strong that the White House had to change its position and bring in Leon Jaworski as special prosecutor.

Watergate was a unique event. It doesn't always work that way. After Watergate, we had Iran-Contra. People sometimes ask, "If you did the job so well, why Iran-Contra?"

As any student of history knows, you never win the fight for liberty through one battle. It is a constant war. The lesson of history is eternal vigilance. You must continue to watch.

I've always used this analogy because I think it's apt. If you have roaches in the kitchen, you don't spray once and get rid of them forever. One extermination doesn't mean they won't come back. You've got to keep spraying. The goddamn crooked politicians are roaches in the kitchen; they'll always come back. Corruption always comes back. Unfortunately, many good people don't have the stamina to continue the fight.

When the Iran-Contra scandal emerged, Congress didn't have the will or the stamina to fight. Congress also didn't have Sam Ervin. Many of the committee members were worried and scared about Reagan's standing with the public, so they limited their investigation. They limited their witness list. They limited what they wanted to find out. They didn't enforce their investigative powers, like the use of their executive sessions against North. They exposed themselves to a terribly messy situation, in which, far from informing the public about the scandal so that the American people understood what happened, the message they conveyed was a very ambiguous one. The public couldn't tell who wore the White Hats and who wore the Black Hats. As a matter of fact, many came to view the congressmen themselves as the Black Hats. The Hill took a lot of heat on that one. Consequently, there was no follow-through, no culminating action, no real impact. In the eyes of most observers, it was a disaster.

This led, of course, to the investigative activity of the Independent Counsel. The Independent Counsel is a product of Watergate, part of the

Ethics in Government Act of 1978,¹⁰ which was one of our first recommendations for reform. Madison said, if men were angels, we wouldn't need government. But men are not angels. We need this check and balance for protection. This was an additional safeguard Congress created to take care of those rare situations—and they are rare—when criminal charges are brought against the President of the United States, the Vice-President, or cabinet officers.

The Justice Department, under the Attorney General, should not prosecute because there is a potential conflict of interest. There is the perception that the White House may be able to exercise undue influence over the investigation. Not that the men and women who serve as Attorney General will be thieves or crooks. They usually are very honest people. But they shouldn't be put in that awkward position because there is obviously a conflict of interest. Some Justice Department prosecutors, who would want to ensure that there was no possible charge of a cover-up, might bend over backwards to take measures that would leave no doubt as to their independence. This could have unfair consequences for the subject of the investigation where an Attorney General went forward with a weak prosecution just to demonstrate his or her integrity. The history of the Independent Counsel Act has shown that most of the independent counsel investigations (there have been about 12) have not found sufficient evidence to prosecute.

If the Department of Justice had made that finding in Meese's case, there would have been a cry of whitewash and coverup. Yet, when Jacob Stein, who was the first of two independent counsel to examine Meese's conduct, found no basis to prosecute Meese, there was no adverse reaction. There wasn't a column in the newspapers, there wasn't a letter to the editor; nobody complained, everybody accepted it. Why? Because the American public had confidence in that decision. It was an objective decision by an independent lawyer. No critic suggested that the Attorney General or the Justice Department was paying off favors to the President.

It was an act of cowardice on the part of Congress to let that legislation die on December 15. My guess, however, is that the Independent Counsel statute will be re-enacted. Unfortunately, the new legislation will probably have some restrictions because there has been criticism that Lawrence Walsh abused his powers. In an ironic sense, Walsh has been the victim of the targets of his investigation. He has been maligned by Executive branch

10. Pub. L. No. 95-521, § 601(a), 92 Stat., 1824, 1867-73 (codified as amended at 28 U.S.C. §§ 591-598).

officials and by President Bush, who didn't like him. They've smeared him. He had an absolutely impossible task when Congress granted immunity to North and Poindexter, an action that tainted the whole prosecution effort. The executive branch pulled the rug from under him every time they could.

Walsh has been condemned for the great expense and time his investigation cost. These critics compare the Walsh prosecutions with what the Justice Department does, pointing out that United States Attorneys don't spend that kind of money or take that time. You cannot compare an ordinary criminal case the United States Attorney prosecutes with the investigation of the Iran-Contra scandal that the Independent Counsel had to undertake. You can more accurately compare it, for instance, to something like the Noriega prosecution. I assure you that the Justice Department spent more time and money investigating Noriega than the Independent Counsel did investigating Iran-Contra.

I think that at the end Walsh lost his temper and lost his judgment. I think there are some things he said towards the end that no prosecutor ought to say publicly with regards to the pardon and other related subjects. It was understandable but not acceptable for a professional prosecutor.

I believe that it is absolutely essential that we have the Independent Counsel. It is one of the achievements that we were most proud of recommending in Watergate.

There is good reason to remember the exposure of Watergate and to remember the Senate Watergate hearings. There is good reason to remember a public servant like Sam Ervin, who played the role that a Senator was expected to play by the Framers of our Constitution. Watergate was a classic. It had impact. It rearranged government power and brought Congress back into power. We redefined for ourselves, who we are as the American people, and what we expect from our government. And I don't think we're going to forget it for a long time—regardless of the scandals that we will continue to have and regardless of wishy-washy congressional committees in the future.

The example of Watergate and the Watergate Committee has to remain a model for future committees. I believe that there will be future scandals. There will be abuses of power by high officials, including the President. The American people must ensure that Congress has its feet held to the fire to do its job when that happens.